

The Slaughter Solution: Bending the Rules Beyond Belief

March 15, 2010

To: Interested Parties

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Subject: The Slaughter Solution: Bending the Rules Beyond Belief

The Democratic Majority has a problem with their efforts to pass healthcare legislation, and it's political: they simply do not have enough Members in the House willing to vote for the Senate-passed healthcare bill. That's understandable because it's an awful bill loaded with special interest provisions. To solve their political problem, they're looking for a procedural solution. That's where the Rules Committee comes in.

On Sunday, senior presidential advisor David Axelrod said on ABC News' *This Week*, "We don't want to see procedural gimmicks used to try to prevent an up-or-down vote on this issue." But gimmicks seem to be exactly what House Democrats are planning to use. According to a Friday report in *Politico*, "[Speaker] Pelosi reminded her members, as she frequently does, that she wants to make the whole process as quick and politically painless as possible, a person present said." Given the widespread unpopularity of the healthcare process, and the Senate bill in particular, it may be quick, but it won't be painless. How will they attempt it? The "Slaughter Solution." If House Democrats are going to be able to move the Senate-passed healthcare bill and a reconciliation "fix-it" package, they are going to have to seriously bend the rules to make it happen.

Moving the Bill through the House

Under the Democratic Majority's strategy, they must get 2 bills to the President's desk: (1) the Senate-passed healthcare bill and (2) the reconciliation "fix-it" legislation colloquially referred to as the "sidecar." The House Budget Committee is beginning the process by marking up the "fix-it" bill today. That bill will be just a shell. Its text will be replaced in the Rules Committee with the still unseen (as of Monday morning) text of the reconciliation bill. Bearing in mind the main problem facing the Majority — a lack of votes for the Senate-passed bill — we expect them to use the rule providing for consideration of the Senate and sidecar bills to minimize the number of difficult votes they will have to force their Members to take. There are at least five potential paths illustrated in the table below.

	Senate Bill	Reconciliation "Sidecar"
	(Senate Amendment to H.R. 3950)	(yet to be reported by Budget Committee)

Scenario 1: "Play it Straight"	Rule provides for an up or down vote	Rule provides for an up or down vote
Scenario 2: "Slaughter Solution 1"	Rule "deems" the Senate bill passed immediately and sends the bill to the President	Rule provides for an up or down vote
Scenario 3: "Slaughter Solution 2"	Rule "deems" the Senate bill passed upon House adoption of reconciliation sidecar	Rule provides for an up or down vote
Scenario 4: "Slaughter Solution 3"	Rule "deems" the Senate bill passed when the Senate passes the reconciliation sidecar	Rule provides for an up or down vote
Scenario 5: "The Double Whammy"	Rule #2 "deems the Senate bill passed immediately and sends the bill to the President	Rule #1 allows the Rules Committee to turn off the motion to recommit Rule #2 "deems" the sidecar bill passed immediately and sends the bill to the Senate

If the Majority were to handle these items under regular order, we could expect up or down votes on both the Senate-passed healthcare bill and the sidecar bill. We know that won't happen. Their political problem is a lack of will to take that all-important first vote on the Senate healthcare bill. This brings us to the "Slaughter Solution" and its many variations.

The Slaughter Solution

When the Chairwoman of the Rules Committee floated the proposed "Slaughter Solution" last week, the outcry was immediate. What she proposed was using a rule providing for consideration of both the Senate and sidecar bills to "deem" the Senate bill as passed, avoiding the political problems that stem from taking a true up or down vote on the horribly unpopular legislation.

The Slaughter Solution comes in three flavors: in the first, the rule simply self-enacts the Senate bill and sends it along to the President for his signature; the second deems the Senate healthcare bill adopted only upon House passage of the reconciliation package; and the third, most egregious option, conditions adoption of the Senate healthcare package on the Senate passage of the reconciliation sidecar. Only then would the Senate-passed healthcare bill be approved by the House. In all three of these scenarios, the Senate-passed healthcare bill wouldn't be given an up or down vote on its own.

While it appears that the Democratic majority has not definitively settled on a strategy, the third Slaughter Solution may not be viable. Recent reports indicated that the Senate parliamentarian has thrown cold water on that scenario by asserting that the House *must* approve and the President *must* sign the Senate-passed healthcare bill before the Senate can even begin the reconciliation process. The reasoning was that the reconciliation instructions contained in the Budget Resolution require changes in *law*, and changes to a yet-to-be-enacted bill don't count. Even Speaker Pelosi and Majority Leader Hoyer seem to have accepted this detail as a reality that must be confronted.

There is one final scenario that is so over the top that it's unlikely that even this Majority would attempt it. But considering their track record, it's worth mentioning - if they are running into serious problems rounding up those final votes, they may try anything. Due to reforms put in place at the beginning of the Republican majority, the Rules Committee is prohibited from reporting a rule which eliminates the minority's ability to offer a final amendment to a new bill before the House, called a motion to recommit. If the Democratic Majority were to first pass a rule "turning off" the motion to recommit, they would be able to perform a magic trick I'm calling the "double-whammy:" one rule could self-enact both the Senate health care package *and* the reconciliation sidecar, meaning with one vote we could pass both bills without anyone having ever actually voted up or down on them.

What Happens Next?

After the Budget Committee finishes its markup, the Rules Committee will meet, and we expect to report a rule matching one of the 3 Slaughter solutions described above. Assuming that the Democrats muster enough votes to pass the rule, it's likely that the Senate bill will be on its way to the President, and the Senate will have the reconciliation sidecar in its hands.

It is worth remembering that the reconciliation process is entirely about the Senate. While it enables the Majority to side-step many of the Senate's 60-vote requirements, it is also tightly restricted by the Budget Act and Senate rules. So the House-passed sidecar bill must meet the Senate's tests for reconciliation, and the individual provisions in the bill must avoid running afoul of the "Byrd Rule," which prohibits inclusion of non-budget related items in a reconciliation bill.

This raises a number of questions that can only be answered once the reconciliation sidecar has left the House and begins moving through the Senate process:

- *Does the "sidecar" qualify as reconciliation legislation in the eyes of the Senate?* If the House makes any mistakes in its handling of the bill, it may be enough to call into question the legislation's status, and could easily derail the entire process with no chance of getting it restarted. Merely titling a bill "reconciliation" is not enough; the Senate looks at the process which passed the bill to define its status. The more shortcuts the Majority takes with the rule, the higher the probability of problems on this front.
- *Are any of the provisions subject to strike under the Byrd Rule?* If a Senator's point of order that a provision violates the Byrd Rule is sustained, and they can't get 60 votes to retain it, then even if the Senate passes the reconciliation bill, it must come back to the House for another vote. Depending on what got stricken, it could make House passage difficult.
- *Will any amendments be adopted?* While the use of the reconciliation process limits debate, it does not limit the ability of Senators to offer amendments. Any amendments adopted will force the bill back to the House for yet another vote. Again, depending on the substance of the any adopted amendments, it could make a House vote difficult.

The one thing that history demonstrates is that the reconciliation process in the Senate is unpredictable. No matter how well you "scrub" the provisions in a bill for potential Byrd rule violations, something always gets through. The Deficit Reduction Act of 2005 had 3 provisions which were stricken on Byrd rule points of order despite a thorough review. The notion that the

reconciliation bill will be immediately cleared by the Senate for the President is difficult to fathom.

The Bottom Line

Reconciliation is no silver bullet. It requires a leap of faith that the Senate won't change anything and — with all due respect to the Senate — that faith is misplaced. Institutionally, they simply can't guarantee that outcome.

Any House Democrat who votes for a rule that moves this process forward is really voting for one thing — to make the Senate-passed healthcare bill the law of the land. The actual language of the rule will be unequivocal on that point. Just because you use a bat to hit a ball instead of throwing it, your neighbor's window is still just as broken. A vote for the rule is a vote for the Senate bill. There is no getting around that fact.

They can break any arm, bend any rule. But the Democratic Majority cannot deny that they are turning the process of our democracy on its head in an effort to achieve a highly unpopular, partisan objective.